

OGC Has Reviewed

28 August 1968

MEMORANDUM FOR THE RECORD

SUBJECT: Employee Ceiling Controls - P. L. 90-364

1. Background: P. L. 90-364 restricts the appointment authority of all agency heads for as long as the number of full-time civilian employees in permanent positions in the Executive Branch exceeds the 30 June 1966 level. It also freezes the number of temporary and part-time employees for each executive agency.

2. The Director of the Bureau of the Budget may grant relief from the permanent position restriction (only 3 out of 4 vacancies may be filled) by reassigning vacancies from one agency to another when he determines it to be "...necessary or appropriate because of the creation of a new department or agency, because of a change in functions, or for the more efficient operation of the Government." (Sec. 201(b)(3)) The legislative history of this provision as developed by the conferees is that "...the more efficient operation of the Government means that the Director of the Budget generally should reassign vacancies to any agency which has reached its June 30, 1966, level." (H. Rpt. 1533, page 45)

3. Smathers-Williams Amendment: The ceiling control provision of P. L. 90-364 is the product of a Senate amendment passed on 2 April 1968 which completely exempted CIA, the Department of Defense, Postal Field Service, FBI, that part of the TVA power program funded by unappropriated funds, and certain miscellaneous programs. These exemptions were later eliminated by the Senate-House Conference Committee. During the 40-odd days from the time the exemptions were reported eliminated by conference and the date when the House approved the conference report (9 May 1968-20 June 1968), there appeared to be an understanding within the Executive Branch that no executive agency should seek a specific exemption from the employee limitation provision.

4. The Senate passed the bill on 21 June 1968 and when it was signed on 28 June 1968 the President stated that "... Congress acted unwisely in the requirement that Federal employment be rolled back to the level of two years ago. This conflicts with the needs of a growing Nation for increased and efficient public services."

5. Subsequent Developments: Following the enactment of P. L. 90-364, a number of exemptions from its manpower limitations were proposed for specific agencies or groups of employees such as:

Postal Establishment - H. R. 18663, inter alia, excludes the "postal establishment" and in connection with the administration of P. L. 90-364 subtracts postal establishment employees from total Federal employment figures. On 23 July the bill was reported out by the House Post Office and Civil Service Committee.

Postal Field Service - H. R. 15387, inter alia, excludes employees in the Postal Field Service except those in regional offices, and employees in the Bureau of Research and Engineering. (P. L. 90-449)

FBI - H. R. 17522, inter alia, excludes investigative and other essential FBI positions determined to be essential to operations by the Director of the FBI (Sec. 207). Both Houses had approved by 1 August 1968.

U. S. Attorneys - H. R. 17522, inter alia, excludes authorized positions in the office of the United States Attorneys. Although initially approved by the Senate, the provision was rejected by the House and the Senate agreed to the House action.

FAA - H. R. 18188, inter alia, excludes positions assigned to the operation and maintenance of the air traffic control system which are determined by the Secretary of Transportation to be essential to assure public safety (Sec. 210). Both Houses had approved by 1 August 1968.

TVA - S. 3710, inter alia, excludes employees of the TVA power program paid from other than appropriated funds (Sec. 217). Both Houses had approved by 1 August 1968.

Renegotiation Board - Amendment No. 687 to H.R. 17324, which has passed the House and which has been reported out of the Senate Committee, excludes employees of the Renegotiation Board. This amendment may be proposed when H.R. 17324 reaches the Senate floor for consideration.

Naval Shipyards - S. 3293, inter alia, exempts civilian employee manning levels at naval shipyards from any manpower limitation applicable to the Navy (Sec. 402). S. 3293 is before a conference committee.

The above summarized exemptions from the manpower limitations of P.L. 90-364 are for the most part contained in appropriation bills. Consequently, such exemptions will terminate on 30 June 1969 when the appropriation acts expire.

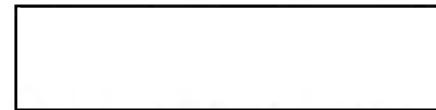
6. Further Dilution of P.L. 90-364: Referring to the exemptions already acted upon by the Congress, the Director of the Bureau of the Budget declared that "...Congress is already beginning to see the unfortunate results of such a blanket approach to a complex problem...imposing such a requirement is simply not the best way to manage the number of persons on the Federal payroll...when the Congress returns in September (additional) exemptions are likely to be passed and we may soon reach the point where the Congress will have effectively overridden this ill-advised method of curtailing Federal employment." Further, during the House consideration of the exemption for FAA Air Traffic Controllers, Mr. Mahon, Chairman of the Appropriations Committee, stated (Congressional Record, 1 August 1968, page H 7994) that the manpower control provision which was inserted in the tax bill was "...a usurpation of the authority of another committee...It was not discussed at length on the floor...The Director of the Bureau of the Budget...protested the proposal...There was no acquiescence whatsoever on the part of the executive, and many in the legislative branch opposed the adoption of this proposal, but the other body was adamant...I am sure

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If (Mr. Mills) were here, he would say that he did not sponsor the proposal...we had to take it as part of the package." Consistent with this viewpoint, the Ways and Means Committee had the day previously reported out (H. Rpt. 1832) H. R. 18985 which provides the Director of the Bureau of the Budget with a pool of 14,000 additional appointments which may be made without regard to the employee ceilings of P. L. 90-364. This action was explained as a temporary expedient to provide more time to reconsider the problems presented by the manpower limitations of P. L. 90-364.

7. Conclusion: There is every indication that additional exemptions from P. L. 90-364 will be proposed for various governmental programs or agencies. Should it be determined that an exemption for the Agency should be initiated, a legislative vehicle is available in H. R. 18786, the CIA Retirement Act Amendments, now pending before the Senate Armed Services Committee.

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